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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,490	07/09/2003	Thomas Hubert Van Steenkiste	DP-306711CIP1	9723
22851	7590	10/13/2005	EXAMINER	
DELPHI TECHNOLOGIES, INC.			BAREFORD, KATHERINE A	
M/C 480-410-202			ART UNIT	
PO BOX 5052			PAPER NUMBER	
TROY, MI 48007			1762	

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/616,490

Applicant(s)

STEENKISTE ET AL.

Examiner

Katherine A. Bareford

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

*Claims 2-3 and 17 are canceled*

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 7, 2005 has been entered.

The After Final amendment of August 12, 2005 has been entered as requested by the RCE submission of September 7, 2005. As a result, claims 2-3 and 17 have been canceled, claim 19 is withdrawn, and claims 1, 4-16 and 18 are pending for examination.

### *Election/Restrictions*

2. Claim 19 remains withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 28, 2005.

### *Double Patenting*

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3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 4-16 and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-8, 10-13 and 16-20 of U.S. Patent No. 6,743,468 (Fuller, et al). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of Fuller provide a teaching or suggestion of all the features required by the present application. For example, as to independent claim 1, Fuller provides, in claim 1, spraying where different populations of particles can be used (as shown by claim 9), that the particles can have an average nominal diameter that can be 106-250 microns (as shown by claim 3), providing a supersonic nozzle as described in part b) with a throat diameter than can be 1.5 to 3.5 mm (as shown by claim 20), and entraining the particles in the gas such that the temperature can be insufficient to melt <sup>the particles</sup> and accelerating to adhere to the substrate (part c) and also entraining the particles in the gas such that the temperature can be sufficient to melt the particles and directing to the substrate (part d). As worded by

Fuller, steps c) and d) can occur at the same time, thus indicating that some particles do not melt and some particles do melt, as provided by the present claim 1. As to the dependent claims, these are suggested by similarly worded dependent claims of Fuller.

*Claim Rejections - 35 USC § 103*

5. The rejection of claims 1-7 and 9-18 under 35 U.S.C. 103(a) as being unpatentable over Bird (US 4938991) in view of Browning (US 4416421) are withdrawn due to the amendment to claim 1 of August 12, 2005 to provide that the non-melted particles adhere to the substrate by "direct bonding", thus indicating that the particles adhere directly to the substrate, not through being held by the matrix of the second, melted, particles.

6. The rejection of claim 8 under 35 U.S.C. 103(a) as being unpatentable over Bird in view of Browning as applied to claims 1-7 and 9-18 above, and further in view of Browning (US 5531590) (hereinafter Browning '590) is withdrawn for the reasons given as to the paragraph above.

*Response to Arguments*

7. Applicant's arguments with respect to claims 1, 4-16 and 18 have been considered but are moot in view of the new ground(s) of rejection.

While the 35 USC 103 rejection has been withdrawn, an obvious double patenting rejection has been made of the claims using US 6,743,468 to Fuller, as discussed in the *Double Patenting* section above.


### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine A. Bareford whose telephone number is (571) 272-1413. The examiner can normally be reached on M-F(6:00-3:30) with the First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications and for After Final communications.

Other inquiries can be directed to the Tech Center 1700 telephone number at (571) 272-1700.

Furthermore, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
KATHERINE BAREFORD  
PRIMARY EXAMINER